

ORIGINAL



0000131014

BEFORE THE CORPORATION COMMISSION

RECEIVED

Commissioners

GARY PIERCE – Chairman
BOB STUMP
SANDRA D. KENNEDY
PAUL NEWMAN
BRENDA BURNS

Arizona Corporation Commission

DOCKETED

NOV 7 2011

2011 NOV -7 P 4:39

AZ. CORP. COMMISSION
DOCKET CONTROL

JOHN E. DOUGHERTY
COMPLAINANT



V.

MONTEZUMA RIMROCK WATER
COMPANUY, LLC.

RESPONDENT

Docket No. W-04254A-11-0323

**MOTION TO MODIFY FORMAL
COMPLAINT WITH ADDITIONAL
ALLEGATION XVII**

BY THE COMPLAINANT:

On August 31, 2011, the Commission entered an order that the Ex Parte Rule (A.A.C. R14-3-113 – Unauthorized Communications) applies to this proceeding and shall remain in effect until the Commission Decision in this matter is final and non-appealable.

On November 7, 2011 Complainant received Commission's response to Complainant's First Data Request in this Docket.

Among the records received are emails (Exhibit 1) documenting that Senior Commission staff and legal counsel allegedly engaged in a conspiracy to knowingly and willfully initiate, conduct and fail to disclose unauthorized communications with Patricia Olsen, owner of the Montezuma Rimrock Water Company in violation of R14-3-113(C)(2) and (D)(1).

The records also reveal that Ms. Olsen allegedly knowingly and willfully engaged in unauthorized communications with Staff in violation of R14-3-113(C)(1).

The emails indicate senior ACC staff members directed a staff engineer to contact Montezuma Rimrock on September 27, 2011, while the Ex Parte orders were in effect for this docket as well as W-04254A-08-0361/0362 (Rate Increase/Financing Application) and W-04254A-11-0296 (Emergency Rate Increase Application).

Ms. Olsen replied to the email on September 29.

The email traffic reveals:

At 11:47 a.m., September 27, 2011, ACC staff attorney Charles Hains received an email from Montezuma Rimrock attorney Douglas Fitzpatrick with an attachment that was an undocketed copy of the Company's Motion to Withdraw its Emergency Rate Application (W-04254A-11-0296).

The motion, which was not docketed until September 29, stated in part that the company had "found a way to resolve its arsenic problem without incurring the expense of constructing an arsenic treatment facility."

At 11:55 a.m., Sept. 27, Mr. Hains forwarded Mr. Fitzpatrick's email to the following Commission staffers: Darak Eaddy, staff utility analyst assigned to Montezuma Rimrock; Marlin Scott Jr., staff engineer assigned to Montezuma Rimrock; Steven Olea, Utilities Division Director; Darron Carlson, Public Utilities Analyst Manager; and Nancy L. Scott, an attorney in the ACC legal division.

At 3:01 p.m., Sept. 27, Mr. Scott sent an email to Ms. Olsen stating: "Staff here is interested in how this was done. Could you please contact me to discuss this resolution."

At 11:43 a.m., Sept. 29, Ms. Olsen sent an email to Mr. Scott stating: "I am working with a company to lease equipment or I will just pay cash for it."

At 12:20 p.m., Sept. 29, Mr. Scott forwarded Ms. Olsen's email to Steve Olea, Charles Hains, Nancy L. Scott, Darron Carlson, Darak Eaddy, and Del Smith, Utilities Engineer Supervisor. This email included the entire string of Emails beginning with Mr. Fitzpatrick's initial contact continuing through Mr. Scott's request for more information from Ms. Olsen and Ms. Olsen's subsequent reply.

At no time have any members of the Commission staff reported the Ex Parte communications on the public record as required by R14-3-113(D)(1).

Complainant Moves the Commission to add the following Allegation XVII to the Complaint as follows:

The Company and Staff have engaged in unauthorized Communications in connection with Montezuma Rimrock's plan to build an arsenic treatment facility in violation of R14-3-133. Complainant seeks all remedies available under R14-3-133(D) and all remedies available under violation of state statutes.

Dated this 7th Day of November 2011,

A handwritten signature in cursive script, appearing to read "John E. Dougherty".

John E. Dougherty
Intervener

Copies of the foregoing mailed
This 7th day of November, 2011 to:

Douglas C. Fitzpatrick
LAW OFFICE OF DOUGLAS C. FITZPATRICK
49 Bell Rock Plaza
Sedona, AZ 86351

Patricia D. Olsen, Manager
MONTEZUMA RIMROCK WATER COMPANY, LLC
P.O. Box 10
Rimrock, AZ 86335

Charles Hains

From: Marlin Scott Jr
Sent: Thursday, September 29, 2011 12:20 PM
To: Steven Olea
Cc: Charles Hains; Nancy L Scott; Darron Carlson; Darak Eaddy; Del Smith
Subject: FW: Montezuma Rimrock Water Company, Docket No. W-04254A-11-0296

FYI.....

From: Patricia Olsen [<mailto:patsy@montezumawater.com>]
Sent: Thursday, September 29, 2011 11:43 AM
To: Marlin Scott Jr
Subject: Re: Montezuma Rimrock Water Company, Docket No. W-04254A-11-0296

Marlin,

I was out of town for two days. I am working with a company to lease the equipment or I will just pay cash for it.

*Patricia Olsen, President
Montezuma Rimrock Water Co. LLC
P.O. Box 10, Rimrock, AZ 86335
928-592-9211
www.MontezumaWater.com*

From: Marlin Scott Jr <MScottJr@azcc.gov>
To: patsy@montezumawater.com
Sent: Tuesday, September 27, 2011 3:01 PM
Subject: FW: Montezuma Rimrock Water Company, Docket No. W-04254A-11-0296

Patsy,

Per the attached letter from your attorney, it states, "The Company as found a way to resolve its arsenic problem without incurring the expense of constructing an arsenic treatment facility". Staff here is interested in how this was done. Could you please contact me to discuss your resolution.

Thx.
Marlin
Marlin Scott, Jr.
Utilities Engineer
Arizona Corporation Commission
1200 West Washington Street
Phoenix, Arizona 85007
Phone: 602.542.7272; Fax: 602.542.0766
Email: msscottjr@azcc.gov

From: Charles Hains
Sent: Tuesday, September 27, 2011 11:55 AM
To: Darak Eaddy; Marlin Scott Jr
Cc: Steven Olea; Darron Carlson; Nancy L Scott
Subject: FW: Montezuma Rimrock Water Company, Docket No. W-04254A-11-0296

FYI

Charles Hains
Arizona Corporation Commission
Attorney, Legal Division
Ph: (602) 542-3402
Fx: (602) 542-4870
email: chains@azcc.gov

From: Doug Fitzpatrick [<mailto:fitzlaw@sedona.net>]
Sent: Tuesday, September 27, 2011 11:47 AM
To: Charles Hains; patsy@montezumawater.com; jd.investigativemedia@gmail.com
Subject: Montezuma Rimrock Water Company, Docket No. W-04254A-11-0296

Attached please find Motion to Withdraw Application for Emergency Rate Increase in the above matter.

Thank you,

Lois
for Douglas Fitzpatrick

===== This footnote confirms that this email message has
been scanned to detect malicious content. If you experience problems, please e-mail postmaster@azcc.gov

Charles Hains

From: Marlin Scott Jr
Sent: Wednesday, October 26, 2011 12:14 PM
To: Charles Hains
Subject: FW: Montezuma Rimrock Water Company, Docket No. W-04254A-11-0296

Follow Up Flag: Follow up
Flag Status: Flagged

...here's 1 for 1.02.

Marlin Scott, Jr.
 Utilities Engineer
 Arizona Corporation Commission
 1200 West Washington Street
 Phoenix, Arizona 85007
 Phone: 602.542.7272; Fax: 602.542.0766
 Email: mscottjr@azcc.gov

From: Patricia Olsen [<mailto:patsy@montezumawater.com>]
Sent: Thursday, September 29, 2011 11:43 AM
To: Marlin Scott Jr
Subject: Re: Montezuma Rimrock Water Company, Docket No. W-04254A-11-0296

Marlin,
 I was out of town for two days. I am working with a company to lease the equipment or I will just pay cash for it.

Patricia Olsen, President
Montezuma Rimrock Water Co. LLC
P.O. Box 10, Rimrock, AZ 86335
928-592-9211
www.MontezumaWater.com

From: Marlin Scott Jr <MScottJr@azcc.gov>
To: patsy@montezumawater.com
Sent: Tuesday, September 27, 2011 3:01 PM
Subject: FW: Montezuma Rimrock Water Company, Docket No. W-04254A-11-0296

Patsy,
 Per the attached letter from your attorney, it states, "The Company as found a way to resolve its arsenic problem without incurring the expense of constructing an arsenic treatment facility". Staff here is interested in how this was done. Could you please contact me to discuss your resolution.

Thx.
 Marlin
 Marlin Scott, Jr.
 Utilities Engineer
 Arizona Corporation Commission
 1200 West Washington Street
 Phoenix, Arizona 85007

Phone: 602.542.7272; Fax: 602.542.0766

Email: mscottjr@azcc.gov

From: Charles Hains

Sent: Tuesday, September 27, 2011 11:55 AM

To: Darak Eaddy; Marlin Scott Jr

Cc: Steven Olea; Darron Carlson; Nancy L Scott

Subject: FW: Montezuma Rimrock Water Company, Docket No. W-04254A-11-0296

FYI

Charles Hains

Arizona Corporation Commission

Attorney, Legal Division

Ph: (602) 542-3402

Fx: (602) 542-4870

email: chains@azcc.gov

From: Doug Fitzpatrick [<mailto:fitzlaw@sedona.net>]

Sent: Tuesday, September 27, 2011 11:47 AM

To: Charles Hains; patsy@montezumawater.com; jd.investigativemedia@gmail.com

Subject: Montezuma Rimrock Water Company, Docket No. W-04254A-11-0296

Attached please find Motion to Withdraw Application for Emergency Rate Increase in the above matter.

Thank you,

Lois

for Douglas Fitzpatrick

===== This footnote confirms that this email message has
been scanned to detect malicious content. If you experience problems, please e-mail postmaster@azcc.gov
